

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 130.610 Sales of Property Originating in Other States

TITLE 86: REVENUE

PART 130

RETAILERS' OCCUPATION TAX

Section 130.610 Sales of Property Originating in Other States

a) Preliminary Comments

- 1) In all examples set out herein below, there are three basic facts which will not be restated in the examples in the interest of avoiding repetition, but which will be assumed to be present in each of the examples. These assumed facts are the following:
 - A) That the property which is involved is located outside Illinois at the time of its sale (or subsequently will be produced outside Illinois);
 - B) that the purchaser or his representative (not an independent carrier engaged in the business of transporting property for hire) first receives the physical possession of the property in Illinois; it is immaterial that the purchaser or his representative subsequently takes or sends the property out of Illinois for use outside Illinois or for use in the conduct of interstate commerce after receiving physical possession of the property in Illinois, and
 - C) that the sale is at retail and is not made as a necessary and incidental part of a transaction in which the seller is engaged in a tax-exempt service occupation.
- 2) Each type of sale will be considered on its own facts. If the sale is made by or through an Illinois place of business at which the seller is sometimes makes intrastate retail sales, refer to Subsection (b) below. If the sale is made by or through an Illinois place of business at which the seller does not make any intrastate retail sales, refer to Subsection (c) below. If the sale is made by or through the seller's place of business outside Illinois, refer to Subsection (d).

b) Sales made by or Through an Illinois Place of Business at Which the Seller Sometimes Makes Intrastate Retail Sales

The seller incurs Retailers' Occupation Tax liability with respect to his receipts from a particular sale if the sale is made by or through an Illinois place of business at which the seller sometimes makes intrastate retail sales. This happens, for example, if such a place of business either

- 1) makes a complete and unconditional offer to sell, which is accepted without modification by the purchaser so as to create a contract, or
- 2) receives an offer or counteroffer to purchase (regardless of where the seller accepts such offer or counteroffer), or

- 3) accepts (i.e., approves so as to create a contract) an offer or counteroffer to purchase, or
 - 4) Makes final delivery of the property in Illinois to the purchaser. (the reference, immediately above, to the making of final delivery of the property in Illinois does not include the delivery of the property by the seller outside Illinois to an independent carrier for transportation directly to the purchaser.)
- c) Sales Made by or Through an Illinois Place of Business at Which the Seller Makes No Intrastate Retail Sales
- 1) The seller may incur Retailers' Occupation Tax liability when the sale is made by or through an Illinois place of business at which he does not make any intrastate retail sales. This is the case, for example, where such a place of business either
 - A) accepts the contract of sale for the seller, or
 - B) receives an offer to counteroffer to purchase, which under authority granted by the seller, can be accepted for the seller by someone in Illinois so as to create a contract (whether such authority is exercised in a particular case or not), or
 - C) makes a complete and unconditional offer to sell which offer is accepted without modification by the purchaser so as to create a contract, or
 - D) receives an order subject to acceptance by the seller outside Illinois, but the seller transfers title to the property in Illinois to the purchaser, or the seller or his representative makes final delivery of the property in Illinois to the purchaser. (The reference, immediately above, to the making of final delivery of the property in Illinois does not include the delivery of the property by the seller outside Illinois to an independent carrier for transportation directly to the purchaser.)
 - 2) The seller's maintenance, in Illinois, of a place of business at which the seller makes no intrastate retail sales does not make the seller taxable in a particular case merely because such place of business engaged in promotional activities in Illinois and receives an order which is subject to acceptance outside Illinois by the seller. However, for information concerning the application of the Use Tax to mere solicitation in Illinois by the seller, see Subpart B of the Use Tax Regulations, (86 Ill. Adm. Code Part 150)
- d) Sales Made by or Through a Place of Business Outside Illinois
- 1) No Retailers' Occupation Tax liability will be incurred in the following situations:
 - A) Where a representative of the seller who reports directly to an out-of-State place of business of the seller, and who is not connected in any way with any Illinois place of business of the seller, receives, in Illinois, an order which is subject to acceptance by the seller outside Illinois;
 - B) where the seller, from a point outside Illinois, makes an offer directly to the purchaser who transmits his acceptance directly to the seller outside Illinois, or
 - C) where the purchaser sends an offer or counteroffer to purchase directly to the seller outside Illinois and the seller accepts the offer or counteroffer outside Illinois.
 - 2) In these situations, it is immaterial where title to the property passes to the purchaser. It is also immaterial how or by whom delivery of the property is made,

provided that final delivery is not made by or through an Illinois place of business at which the seller does some intrastate retail selling.

- 3) If the following situations where the sale is made by or through an out-of-State place of business of the seller, Retailers' Occupation Tax liability will, nevertheless, be incurred:
 - A) Where the seller or his authorized representative accepts an order in Illinois so as to create a contract, or
 - B) where the order is received in Illinois on behalf of the seller and someone in Illinois has authority to accepted such order so as to create a contract (whether such authority is exercised in the particular case or not).
- 4) Even though the seller's out-of-State place of business is involved in the transaction in some way, Subsection (b) or Subsection (c) of this Section, rather than Subsection (d), applies if an Illinois place of business of the seller receives the offer or counteroffer to purchase, or accepts the offer or counteroffer to purchase so as to create a contract, or transmits a complete and unconditional offer to sell to the purchaser, or makes the final delivery of the property in Illinois to the purchaser. In that event, the answer to the question of whether Subsection (b) or Subsection (c) applies depends on whether or not such Illinois place of business at which the seller does some intrastate retail selling in Illinois.

(Source: Amended and effective August 2, 1971)